

SENATE NO. 766

AN ACT RELATIVE TO RENT WITHHOLDING

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

- 1 SECTION 1. Section 8A of Chapter 239 of the General Laws is hereby amended by striking out the
2 second, third and fourth paragraphs and inserting in place thereof the following:
- 3 Whenever any counterclaim or claim of defense under this section is based on any allegation
4 concerning conditions affecting the premises or services or equipment provided therein, the tenant
5 or occupant shall not be entitled to relief under this section unless:
- 6 (1) (a) the board of health or other local enforcement agency has certified that such conditions
7 constitute a violation of the standards of fitness for human habitation as established in the state
8 sanitary code, the state building code, or any other law, ordinance, by-law, rule or regulation
9 establishing such conditions.
- 10 (b) the tenant or occupant, following such certification, prior to any withholding of rent, shall be
11 required to notify the landlord, or the landlord's agent, in writing, and such notice to be received by
12 the landlord, or the landlord's agent, before any rents become arrears
- 13 (2) the landlord does not show that such conditions were caused by the tenant or occupant or any
14 other person acting under his or her control, except that the defendant shall have the burden of

15 proving that any violation appearing solely within that portion of the premises under his or her
16 control and not by its nature reasonably attributable to any action or failure to act of the landlord
17 was not so caused;

18 (3) the premises are not situated in a hotel or motel, or in a lodging house or rooming house wherein
19 the occupant has main rained such occupancy for less than three consecutive months;

20 (4) the landlord does not show that the conditions complained of cannot be remedied without the
21 premises being vacated, provided however that nothing in the clause shall be construed to deprive
22 the tenant or relief under this section when the premises are temporarily vacated for purposes or
23 removal of covering or paint, plaster, soil or other accessible materials containing dangerous levels
24 of lead pursuant to chapter one hundred and eleven; and

25 (5) the tenant shows proof that all rent has been deposited as it becomes due, in the event the
26 tenants' rent is subsidized by any governmental agency, or governmentally subsidized program, that
27 the tenants, rent escrowing requirements are limited to only that portion of the rent paid by the
28 tenant:

29 (a) into an account with the court, (b) into an escrow account controlled by an attorney, or (c) into
30 an escrow account at a commercial bank located within the Commonwealth payable on the
31 signatures of both the tenant or occupant and the landlord or person to who rent is customarily paid.

32 SECTION 2. Any amounts so deposited shall be paid over in accordance with the direction of the
33 court after hearing the case as the parties may mutually agree. If the landlord is required by law to
34 make repairs to the premises, any amounts so deposited and otherwise payable to the landlord shall
35 be used for such purposes if the court so orders.

36 SECTION 3. This statute shall not apply unless the landlord has included the language of this
37 statute in the written tenancy agreement.

38 SECTION 4. Rent Escrow Accounts at Commercial Banks

39 Every commercial bank in the Commonwealth, upon the request of a person claiming relief under
40 this section, shall create an account payable only (except as provided below) upon the signatures of
41 two named parties, one being the person claiming relief and the other being any person named by
42 the person claiming relief. The bank shall not require any signature or identity verification of the
43 person named by the person claiming relief in order to create the account nor until such time as a
44 payment from the account is requested. The bank shall provide, upon demand of either of the
45 named parties on the account of the court, a statement of the deposits to the account and the named
46 two-party authorized payers. At the time that a payment from the account is requested, the bank
47 shall accept a standard signature guarantee as sufficient authorization for payment by the person
48 named by the person claiming relief. If such signature guarantee is executed in the normal and
49 customary manner, the bank shall not be held liable for claims of incorrect payment. The bank shall
50 also make payment from such account upon court order. The bank may deduct from the account all
51 ordinary and reasonable expenses for operating the account at any time. If the account is left inactive
52 for longer than two years, the bank shall make payments of the entire amount in the account (less
53 ordinary and reasonable banking fees) to the person named by the person claiming relief, upon
54 receipt of a duly authorized signature guarantee.

55 SECTION 5. The act shall take effect upon passage.